

Notice of Allowability

Application No.

10/802,280

Examiner

Raymond J. Henley III

Applicant(s)

URATA ET AL.

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed April 13, 2007.
2. ☒ The allowed claim(s) is/are 1-43 and 54-80.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Drawings filed March 17, 2004 Acceptable

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 4/13/2007
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Raymond J. Henley III
Raymond J. Henley III
Primary Examiner
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Examiner's Comments

Applicants' amendment and Information Disclosure Statement filed April 13, 2007 has been received and entered into the application. Accordingly, claims 44-53 have been canceled and claims 54-80 have been added.

In light of the amendments, Applicants' remarks at pages 10-12 of their amendment and the Examiner's remarks below, claims 1-43 and 54-80, all claims pending, are deemed in condition for allowance.

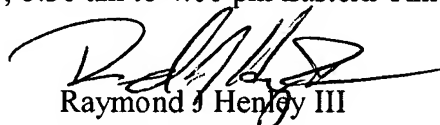
It is first noted that in Applicants' remarks at page 11 of the amendment, third paragraph, their identification of the pertinent section of the MPEP appears to be incorrect in setting forth § 1504.06 because this section is directed to design patents. The correct section, which contains the same information concerning utility patents, is § 804.

Also, the Examiner notes with regard to co-pending application Serial No. 10/802,220, the provisional obviousness-type double patenting rejection has not been withdrawn because, as Applicants' note at page 11 of their amendment, that application has not been examined. Rather, the present application and the '220 application have the same filing date, (i.e., March 17, 2004). As set forth in MPEP § 804(I)(B)(1), "If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer".

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The examiner deems the '220 application to claim the improvement because the claims therein have added limitations in comparison to the present claims. For example, in the method for the treatment of a cardiovascular disorder, the '220 applications claims include the additional requirement for an HMG-CoA reductase inhibitor. Accordingly, it is proper to withdraw the ODP rejection in the present application and not require a terminal disclaimer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.



Raymond J. Henley III
Primary Examiner
Art Unit 1614

June 25, 2007